

200902015



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 15 2008

U.I.L. No. 408.03-00

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S.T.E.P. R.A.T.Y.

LEGEND:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX

Institution A = XXXXXXXXXXXXXXXXXXXX

Institution C = XXXXXXXXXXXXXXXXXXXX

Institution D = XXXXXXXXXXXXXXXXXXXX

Amount M = XXXXXXXXXXXXXXXXXXXX

Amount N = XXXXXXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXXXXXX

Date 4 = XXXXXXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXXXXXX

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XXXXXXXXXXXXXXXXXX

IRA Y = XXXXXXXXXXXXXXXXXXXX

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IRA Z = XXXXXXXXXXXXXXXXXXXX

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Dear :

This is in response to your request dated February 26, 2008, as supplemented by correspondence dated May 27, 2008, submitted by your authorized representative in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

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The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 55, maintained IRA X with Institution A and IRA Y with Institution D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to errors committed by Institution C which resulted in Amount M being placed in a non-IRA account.

Taxpayer A represents that on Date 1, he requested a distribution of Amount M from IRA X and Amount N from IRA Y with the intent of rolling Amounts M and N directly into another IRA at Institution C. On Date 1, Taxpayer A asked Institution C for an account number that Amounts M and N could be rolled into to establish an IRA with Institution C. A clerk at Institution C inadvertently gave him an inactive non-IRA account number. On Date 2, as per Taxpayer A's instructions, Institution D in a trustee-to-trustee transfer issued a check in Amount N to Institution C. On Date 3, as per Taxpayer A's instructions, Institution A in a trustee-to-trustee transfer issued a check in Amount M to Institution C to be deposited into an IRA account. Institution C erroneously deposited Amounts M and N into a non-IRA account. Further, when Taxpayer A received a Form-1099 for the taxable year, letter "G" in box 7 was checked, indicating that the distribution was a nontaxable IRA rollover. Institution C's error was not discovered until Date 4 when Taxpayer A was reviewing his annual tax reporting statement from Institution C. Institution C corrected its mistake and placed Amount N into IRA Z. However, it did not correct the error with respect to Amount M.

Based on the facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount M from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

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(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information Taxpayer A presented, and the documentation submitted demonstrate that Institution C erred by depositing Amount M in a non-IRA account.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount M from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount M into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount M will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact XXXXXXXXX, I.D. XXXXX, at XXXXXXXX. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,


Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose